

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LAWRENCE COLEMAN,)
)
Petitioner,)
)
vs.) Case No. 4:98CV1015 CDP
)
MIKE KEMNA,)
)
Respondent.)

MEMORANDUM AND ORDER

Pending before me is petitioner's "Petition for Federal Rule Sixty (B) Seeking to Reopen Original § 2254 Habeas Corpus to Vacate, Set Aside And Correct Judgment." This is petitioner's third successive motion seeking this relief under Rule 60(b), and I will deny it for the same reasons as before.

Petitioner originally filed for habeas corpus relief pursuant to 28 U.S.C. § 2254 in July of 1998. I dismissed the petition on October 12, 1999, however, because it was filed well outside the one-year statute of limitations set out in 28 U.S.C. § 2244(d). I also denied a Certificate of Appealability from that Memorandum and Order. Petitioner moved to alter or amend judgment, which I denied on October 28, 1999. He later filed a notice of appeal, but his appeal was dismissed by the Eighth Circuit Court of Appeals on March 30, 2000.

Since the dismissal of his appeal, petitioner has filed two motions for reconsideration under Rule 60(b) – one in April of 2000 and a second in February

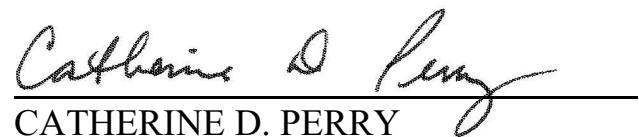
of 2009. Both motions were denied because petitioner's original petition was untimely, and his motions for reconsideration did not raise any new or meritorious arguments on this point. His current motion fails for exactly the same reason. Put simply, petitioner's original petition was untimely, and no new legal theory or argument will change that fact. Moreover, petitioner cannot use Rule 60 as a way of avoiding the bar on successive habeas petitions set out in 28 U.S.C. § 2244(a) and (b), or for avoiding the limitations period set out in 28 U.S.C. § 2244(d)(1). Accordingly, petitioner's Rule 60 motion must be denied.

Accordingly,

IT IS HEREBY ORDERED that petitioner's "Petition for Federal Rule Sixty (B) Seeking to Reopen Original § 2254 Habeas Corpus to Vacate, Set Aside And Correct Judgment" [#41] is denied.

IT IS FURTHER ORDERED that petitioner's motion to proceed in forma pauperis [#42] is denied as moot.

IT IS FURTHER ORDERED that the Court will not issue a Certificate of Appealability from this Order.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 28th day of February, 2011.